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UNITED STATES OF AMERICA

v.

SALIM AHMED HAMDAN

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)  
) **PROSECUTION**  
) **RESPONSE TO DEFENSE**  
) **AMENDED**  
) **MOTION FOR**  
) **DOCKETING**

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)  
) 14 September 2004

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1. Timeliness. This motion response is being filed in a timely manner.
2. Prosecution Position on Defense Motion. The Prosecution opposes the Defense request to for a trial date of 15 November 2004. The Prosecution requests a trial on the previously agreed upon date by both parties of 11 December 2004 or on a date thereafter.
3. Facts.
  - a. The Prosecution originally requested a trial date of 7 December 2004
  - b. The Defense opposed this request and asked for a date of 11 December 2004.
  - c. The Prosecution did not oppose the Defense request and agreed to a trial commencement date of 11 December 2004 (noting that it was a Saturday).
  - d. The Defense orally told the Prosecution that because of the availability of their interpreter, they needed to go to trial in December or at some date in early 2005.
  - e. The Defense has filed 10 notice of motions and filed an additional two motions.
  - f. On 19 August 2004, the Defense requested that litigation and decisions on Defense motions be held in abeyance until other federal proceedings had concluded.
  - g. The Defense has stated that they may have a number of additional “evidentiary” motions that may be filed at a later date.
  - h. There are currently unresolved “challenges for good cause” pending against five of the six current Commission Members.
  - i. The Prosecution has provided over 1500 pages of discovery materials to the Defense. The Prosecution served a reciprocal discovery request on the Defense on 30 July 2004. To date there has been no response to this request from the Defense.
  - j. The cost for air transportation to GTMO (one way) is approximately \$400,000.

4. Discussion.

The Prosecution was very accommodating to the Defense when the Defense requested a trial date of 11 December 2004. Moving the date up to 15 November is simply not practical and to agree to such a proposal would be unrealistic and

not move us forward with respect to getting this case tried. The reality of the situation is:

- a. There are four pending cases that will likely require substantial additional voir dire that may take up the entire week of 1 November.
- b. There are three cases that are already scheduled for motions at some point in early November and there well may be a fourth. Based on interpreter issues, complex legal issues and issues of law being decided by a group of people rather than one individual, it is likely that it could take several weeks to resolve these motions.
- c. The Detailed Military Defense Counsel has stated to the Prosecution that his “evidentiary motions” have not yet been filed. These are motions that may require the production of witnesses and other evidence. At this stage, these motions have not even been identified. It is unrealistic to think that such motions can be litigated prior to 15 November.
- d. The rulings on the motions will greatly impact the trial on the merits. The resolution of some motions may result in mandatory interlocutory appeals and they may be such that things get held in abeyance until they get resolved. Logistics for GTMO are extremely difficult. We would have to line up logistics for a 15 November trial start date prior to the motions even being litigated on 1 November.
- e. The Defense has not provided the Prosecution any discovery to date. The Defense has alluded that several of their witnesses may be coming from Yemen and that they may have several other overseas witnesses. It is anticipated that it may have to be litigated as to whether these witnesses do in fact have probative value and are worthy of production. At this point we just don’t know as these witnesses have not been identified nor has a synopsis of their expected testimony been provided.
- f. It is anticipated that several other regulations or instructions relating to Military Commission procedure are going to be issued by the Appointing Authority over the next several weeks.
- g.

5. Conclusion.

The Prosecution stands ready to proceed to trial on the merits on 11 December 2004 as previously agreed upon by the Prosecution and Defense. If the scheduling of al Qosi precludes this trial from commencing on or near this date, the prudent course of action is to commence the Hamdan trial in January.

***NAME REDACTED***  
CDR, JAGC, USN  
Prosecutor